that the damages are conjectural. In the instant case it was alleged that the total crop of loganberries was quite limited and that the berries contracted for were essential to the carrying on of P's canning business. Thus the legal remedy appears to be entirely inadequate. Like chattels could not be obtained elsewhere and ascertaining the damage would involve an inquiry into lost profits and possibly the value of P's business. In *Curtice Bros. Co.* v. *Catts,* 72 N. J. Eq. 831, a contract to sell tomatoes was specifically enforced because of the uncertainty of the market. Other examples of the enforcement of delivery of rather prosaic chattels may be found in *Equitable Gas Light Co.* v. *Baltimore Coal Tar & Mfg. Co.,* 63 Md. 285, (coal tar); *Gloucester I. & G. Co.* v. *Russia Cement Co.,* 154 Mass. 92, (fish skins); *Omaha Lumber Co.* v. *Coöperative Inv. Co.,* 55 Colo. 171, (standing timber). The principal case would appear to be well within such a line of authorities.

EVIDENCE—PROBATIVE VALUE OF PRESUMPTIONS.—In an action to recover for baggage destroyed by fire, the defendant offered in evidence rates filed with the Interstate Commerce Commission to show that the goods accepted as baggage should be classed as merchandise. The court ruled that the rate schedules were not conclusive unless they were also on file in the railway office. When the defendant rested he had introduced no evidence to prove this, but *held,* that since there was a penalty for failure to file the schedule of rates, the presumption of innocence could be used as evidence to aid defendant in establishing the fact of the rates being filed, but would not justify a directed verdict since it was opposed by the conflicting presumption that the agent acted correctly in accepting the goods as baggage. *Simpson* v. *Central Vt. R. Co.* (Vt., 1921), 115 Atl. 299.

The decision is in accord with previous Vermont holdings. It was held reversible error for the trial court to refuse to charge that the presumption of undue influence was to be regarded as a piece of evidence to be weighed in favor of the contestants. *In re Cowdry's Will,* 77 Vt. 359. Reliance is placed on *Coffin* v. *United States,* 156 U. S. 432, which held that the presumption of innocence was to be considered as evidence in favor of the accused, and that an instruction as to the necessity of proving him guilty beyond a reasonable doubt was not sufficient. This rule was again approved in *Kirby* v. *United States,* 174 U. S. 47. It has been held that the fact that a woman endorsed certificates of stock created a presumption that she knew their contents, and the presumption stood in lieu of evidence of the fact, and should be weighed against facts offered in rebuttal. *Williams* v. *Vreeland,* 244 Fed. 346. But it seems that the Supreme Court earlier entertained a different opinion from that expressed in *Coffin* v. *United States, supra.* As, "the presumption that public officers have done their duty, like the presumption of innocence, is undoubtedly a legal presumption; but it does not supply proof of a substantive fact." *United States* v. *Ross,* 92 U. S. 281. And also, "presumptions are indulged to supply the place of facts; they are never allowed against ascertained and established facts. When these appear, presumptions disappear." *Lincoln* v. *French,* 105 U. S. 614. These two decisions suggest what appears to be the more accurate and sound rule—*i. e.,*

that presumptions only affect the burden of going forward with the evidence, or operate to make a *prima facie* case, but have no probative value in themselves apart from the substantive facts which give rise to them. This view is approved by authorities. THAYER, PRELIM. TREAT. EVID., 314, 575; 4 WIGMORE, EVID., Sec. 2491. It is also the view more generally accepted by the courts. See 13 MICH. L. REV. 504; 8 COL. L. REV. 127. It is said that "presumptions are rules of convenience based upon experience or public policy, and established to facilitate the ascertainment of truth in the trial of causes." *Ward* v. *Teller Reservoir & Irrigation Co.*, 60 Colo. 47. See also *Helbig* v. *Citizens Insurance Co.*, 234 Ill. 251; *Nicholson* v. *Neary*, 77 Wash. 294. "A presumption of fact will not be permitted to contradict or overcome facts actually proved." *Western Advertising Co.* v. *Starr Publishing Co.*, 146 Mo. App. 90. It was held error to find for the plaintiff upon no other proof than the fact that his cow was found dead near the tracks, which in the lower court was deemed to prove that it was killed by a train; on appeal it was decided that this conclusion could only be reached by erroneously giving probative effect to a presumption. *Union Pacific R. Co.* v. *Bullis*, 6 Colo. App. 64. Many courts appear not to discriminate between the two views as to the probative effect of presumptions, but assume that the distinction is merely academic. That it is important, however, is explained in *Hall* v. *State*, 78 Fla. 420, where it was held that the lower court properly refused to instruct that the presumption of innocence should go to the jury as evidence, because it incorrectly assumed that there were stages in the process of conviction. 1. Overcoming the presumption of innocence. 2. Proving the defendant guilty. The fallacy of this is seen in regarding the proof as not sufficient when the presumption of innocence is overcome, because the defendant is then in effect still presumed to be innocent. The same reasoning is applicable to any presumption of fact which is claimed to have probative effect, and shows the error in the principal case which regards the two opposing presumptions as evidence.

GIFTS—ASSIGNMENT OF SAVINGS BANK DEPOSIT.—Deceased, in the presence of his wife, delivered a written order to the bank, transferring his savings account standing in his name to a joint account between himself and wife, subject to withdrawal by check, in the event of death of either the balance to belong to the survivor. The pass book was in the bank's possession. *Held*, not a valid gift, since the depositor did not in his lifetime release control and dominion over the account. *Pearre* v. *Grossnickle* (Md., 1921), 115 Atl. 49.

To constitute a valid gift of a chose in action, since there can be no actual delivery of the subject matter, the donor must surrender to the donee his voucher of right or title—that which is essential to his dominion over the subject of the gift. *Cook* v. *Lum*, 55 N. J. L. 373. Often in the case of savings bank accounts presentation of the bank book is essential in order for one to draw on the account. Where that is the case, a delivery of the savings bank book with intent to give the donee the deposits represented by the book constitutes a completed gift. *Hill* v. *Stevenson*, 63 Me. 364.